

STATE OF MICHIGAN
COURT OF APPEALS

WOLTERS REALTY, LTD.,

Plaintiff-Appellee,

v

SAUGATUCK TOWNSHIP, SAUGATUCK
PLANNING COMMISSION, and SAUGATUCK
ZONING BOARD OF APPEALS,

Defendants-Appellants.

UNPUBLISHED

October 25, 2005

No. 247228

Allegan Circuit Court

LC No. 00-028157-CZ

ON REMAND

Before: Fort Hood, P.J., and Donofrio and Borrello, JJ.

PER CURIAM.

Defendants Saugatuck Township, Saugatuck Planning Commission, and Saugatuck Zoning Board of Appeals appeal as of right from the trial court's ruling that the township's zoning ordinance, as applied to a certain parcel of land owned by plaintiff Wolters Realty, Ltd., was unreasonable, and the trial court's order enjoining defendants from interfering with plaintiff's development of a travel plaza¹ on property that plaintiff owned within the township. We affirm.

This Court previously issued an opinion in this case in which we did not consider the merits of defendants' arguments on appeal because we concluded that plaintiff had not sought a variance and therefore had failed to satisfy the rule of finality as defined and explained in *Paragon Properties Co v Novi*, 452 Mich 568; 550 NW2d 772 (1996). We therefore determined that defendants' issues were not ripe for adjudication. *Wolters Realty, Ltd v Saugatuck Twp*, unpublished opinion per curiam of the Court of Appeals, issued August 3, 2004 (Docket No. 247228). In lieu of granting leave to appeal our previous decision in this case, the Supreme Court remanded to this Court, directing us to reconsider our opinion in light of a misstatement in the opinion in which we asserted that plaintiff never sought a zoning variance. *Wolters Realty, Ltd v Saugatuck Twp*, 472 Mich 908; 696 NW2d 711 (2005). On remand, we will consider defendants' arguments which we previously declined to address based on our conclusion that

¹ The travel plaza apparently would include a gas station, truck stop, fast food center, and convenience store.

because plaintiff failed to exhaust its administrative remedies, the issues on appeal were not ripe for review. The facts of this case were adequately articulated in our previous opinion; therefore, we will not restate them again in this opinion.

Defendants contend that the trial court erred in holding that the zoning ordinance was unreasonable as applied to plaintiff's property because plaintiff failed to satisfy its burden to demonstrate that the current zoning scheme is arbitrary and capricious and fails to advance a reasonable governmental interest. We disagree.

We review de novo a trial court's ruling regarding a constitutional challenge to a zoning ordinance. *Jott, Inc v Clinton Twp*, 224 Mich App 513, 525; 569 NW2d 841 (1997). However, we give considerable deference to the trial court's factual findings, and we will not disturb such findings unless we would have reached a different result if we had been in the trial court's position. *Id.* at 525-526.

Both the Michigan and United States Constitutions guarantee that no person will be deprived of life, liberty, or property without due process of law. *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173; 667 NW2d 93 (2003), citing US Const, Am XIV; Const 1963, art 1, § 17. The essence of a claim for a violation of substantive due process is that the government may not deprive a person of liberty or property by an "arbitrary" exercise of power. *Id.* (emphasis in original). A plaintiff is denied due process by a zoning ordinance if the ordinance is unreasonable. *Id.* "A zoning ordinance may be unreasonable either because it does not advance a reasonable governmental interest or because it does so unreasonably." *Id.* at 173-174. The following rules apply when this Court reviews a challenge to a zoning ordinance:

(1) the ordinance is presumed valid; (2) the challenger has the burden of proving that the ordinance is an arbitrary and unreasonable restriction upon the owner's use of the property; that the provision in question is an arbitrary fiat, a whimsical ipse dixit; and that there is not room for a legitimate difference of opinion concerning its reasonableness; and (3) the reviewing court gives considerable weight to the findings of the trial judge. [*Frericks v Highland Twp*, 228 Mich App 575, 594; 579 NW2d 441 (1998), quoting *A & B Enterprises v Madison Twp*, 197 Mich App 160, 162; 494 NW2d 761 (1992).]

Some of the factors to consider in making a reasonableness determination include the use of surrounding areas, traffic patterns, and available water supply and sewage disposal systems. *Johnson v Lyon Twp*, 45 Mich App 491, 494; 206 NW2d 761 (1973). In addition, a master plan adopted in compliance with statutory requirements by a responsible political body is of itself evidence of reasonableness. *Parkdale Homes, Inc v Clinton Twp*, 23 Mich App 682, 686; 179 NW2d 232 (1970).

Both plaintiff and defendants presented expert testimony regarding the uses of the property surrounding plaintiff's property. Plaintiff's expert concluded that the surrounding land uses near plaintiff's parcel were commercial in nature, while defendants' expert testified that the land surrounding plaintiff's property contained many residential dwellings and that the A-2 (agricultural) portion of plaintiff's property was sufficiently large to accommodate a number of home sites. A map of the geographical area in question indicates that there are residential areas near plaintiff's property, but it also reveals that the property immediately adjacent to the portion

of plaintiff's property that the proposed travel plaza would occupy, which was the southern portion of the parcel, was zoned commercial and was being used for commercial purposes. We further observe that the evidence revealed that the portion of plaintiff's property that was zoned C-1 (commercial) was irregularly shaped and separated. It is undisputed that there is one southern piece of C-1 property that is 208 feet deep and 176 feet wide, along with a separate rectangular section of C-1 property which runs parallel to the Blue Star Highway that is 700 feet long by 90 feet wide and is landlocked between existing commercial uses and the A-2 portion of plaintiff's property.

In light of the parties' conflicting evidence regarding the nature of the use of the property surrounding plaintiff's property, we defer to the trial court's superior ability to judge the credibility of the witnesses. The trial court was in a better position than this Court to evaluate the credibility of the witnesses because the trial court had the opportunity to observe the witnesses in court and hear them testify. See *Kropf v Sterling Heights*, 391 Mich 139, 163; 215 NW2d 179 (1974). As an appellate court, this Court had no such opportunity. *Id.* In light of the trial court's superior ability to judge the credibility of witnesses, we decline to interfere with the trial court's finding that the land surrounding plaintiff's land was predominately commercial in character because this decision depended, ultimately, upon which witnesses the trial court found most credible.

Defendants contend that they have a legitimate and reasonable interest in prohibiting the development of the travel plaza because there is no city water or sewer service to serve plaintiff's land. According to defendants, the lack of public utilities to service a gas station constitutes a legitimate governmental interest. Defendants contend that the absence of water and sewer poses a problem because there is a risk of a fire at a gas station, and this risk is magnified by the lack of access to public water. In addition, defendants contend that they have a legitimate interest in preventing groundwater contamination, and public water would be essential in the event of a gasoline spill or leak to minimize contamination. The trial court disagreed, stating that in light of "the present technology and present attitude of the State Department regulating the type of business that plaintiffs proposed here, the likelihood of a major event occurring [is] slight as not [to] be a concern or more specifically of slight concern only."

Given the level of deference we must afford the trial court's finding in this regard, we decline to disturb the trial court's conclusion because there was ample testimony by plaintiff's witnesses that the groundwater table would be sufficiently protected by underground storage tanks with backup warning systems. Additionally, we observe that in addition to many single-family residences that are located in the geographical area near plaintiff's property, roughly twelve commercial establishments already exist in the area of plaintiff's parcel, including one gas station. These existing residences and commercial uses have been adequately served by non-public sewer and water. Therefore, we are not persuaded by defendants' argument that one additional commercial business, plaintiff's travel plaza, could not also be adequately served without public water and sewer.

Defendants next argue that the trial court should have given defendant township's comprehensive plans more deference and more respect in deciding this case. The township's comprehensive plan proposed to eliminate commercial zoning in the area where plaintiff's proposed travel plaza would be located. Specifically, the plan states that "the present commercial zoning of Blue Star [Highway] south of the Douglas interchange should be

eliminated except for small areas representing existing commercial establishments at the freeway and M-89 interchanges.” “Whether a zoning classification advances a city’s master plan is a factor in determining reasonableness. It is, however, only one factor; it does not replace the balancing of interests required under an assertion of the police power.” *Troy Campus v City of Troy*, 132 Mich App 441, 457; 349 NW2d 177 (1984). Certainly, defendants are entitled to create a comprehensive plan for future development that limits commercial uses for the health, safety and welfare of the surrounding area and its residents. However, a comprehensive plan for the future does not by itself validate existing zoning patterns or the township’s change to those zoning patterns. See *id.*

Despite the comprehensive plan’s proposal to eliminate all other commercial zoning in the area where plaintiff’s proposed travel plaza would be located, defendants expanded the C-1 portion of plaintiff’s parcel after establishing its comprehensive plan. Defendants’ expert planner admitted on cross-examination that, notwithstanding the fact that the master plan suggested that there was already too much commercial zoning, the C-1 portion by plaintiff’s parcel was actually expanded because of its location next to a highway interchange. The validity of a zoning regulation must be tested by existing conditions. *Id.* In this case, the existing conditions included the fact that plaintiff’s property was located near other commercial property and that it was located near access to a major highway. Therefore, we conclude that the trial court properly balanced defendants’ interest in carrying out its comprehensive plan with plaintiff’s proposal to use its property to construct a travel plaza.

In sum, we find that plaintiff satisfied its burden to establish that application of the zoning ordinance was unreasonable as applied to plaintiff’s property. Mindful of our responsibility to defer to the trial court’s factual findings, we decline to disturb the trial court’s conclusions regarding the nature of the property surrounding plaintiff’s property, the lack of public water and sewer to service plaintiff’s property, and the township’s comprehensive plan. We also refuse to interfere with the trial court’s balancing of defendants’ authority to adopt a zoning ordinance and establish zoning districts with plaintiff’s reasonable use of its property because we are not convinced that we would have reached a different decision had we been in the trial court’s position.

Defendants finally argue that plaintiff failed to establish that its proposed use of its property was reasonable and that the trial court erred in failing to make adequate factual findings regarding the reasonableness of plaintiff’s proposed use of its property. In an “as applied” challenge to a zoning ordinance, even if a court determines that a challenged zoning ordinance is unreasonable, there remains the issue of determining whether the proposed use by the plaintiff is reasonable. See *Schwartz v Flint*, 426 Mich 295, 328; 395 NW2d 678 (1986). A plaintiff must establish that a specific use is reasonable by a preponderance of the evidence. *Id.* “The court generally looks to the existing uses and zoning of nearby properties in determining reasonableness.” *Id.* As we stated above, we defer to the trial court’s conclusion that the land uses for the property surrounding plaintiff’s property were primarily commercial. We therefore find that plaintiff satisfied its burden of establishing that the property surrounding its property was primarily commercial and even included one gas station. Furthermore, we find that plaintiff established by a preponderance of the evidence that its proposed use of its property as a travel plaza was reasonable.

Furthermore, we conclude that the trial court articulated adequate findings of fact regarding the reasonableness of plaintiff's proposed use of the property. Findings of fact regarding matters contested at a bench trial are sufficient even if they are "[b]rief, definite, and pertinent," where it appears that the trial court was aware of the issues in the case and correctly applied the law and where appellate review would not be facilitated by requiring further explanation. MCR 2.517(A)(2); *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). Moreover, brevity in the explanation of factual findings is not improper so long as the factual findings reveal the factual basis for the court's ultimate conclusions. *Powell v Collias*, 59 Mich App 709, 714; 229 NW2d 897 (1975). Finally, as we observed above, we give considerable deference to the trial court's factual findings, and we will not disturb such findings unless we would have reached a different result if we had been in the trial court's position. *Jott, supra* at 525-526.

In this case, the record reveals that the trial court heard extensive testimony regarding the reasonableness of the proposed use. Both plaintiff and defendants presented expert testimony regarding the characteristics of the area surrounding plaintiff's parcel. There was also testimony from both sides concerning underground storage tanks and the risks, or lack thereof, associated with the existence of another gas station off of M-89 and Interstate 196. Indeed, the factual arguments regarding the reasonableness of the ordinance itself were intermingled and interchanged with the reasonableness of the proposed use. The trial court's opinion clearly acknowledged all of the competing evidence, acknowledged the proposed use, and then concluded that the proposed use was reasonable. Therefore, despite the apparent brevity of the trial court's finding that the proposed use was reasonable, it is clear that the trial court's determination that plaintiff's proposed use was reasonable was supported by the facts. It is unnecessary to remand this matter because the record indicates that the trial court was aware of the issues in the case and correctly applied the law and because any further explanation by the trial court would not facilitate appellate review.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello